

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSE MUNOZ-CHICO,

Defendant.

Case No. 03-10189-01-JTM

Case No. 04-3420-JTM

MEMORANDUM AND ORDER

This matter is before the court on two motions submitted by defendant Jose Munoz-Chico, who, following a guilty plea, was convicted of one count of illegal reentry after deportation for an aggravated felony, in violation of 8 U.S.C. § 1326(a) and (b). After a downward departure in the sentence authorized under the Sentencing Guidelines, the court imposed a sentence of 22 months imprisonment.

Judgment was entered against the defendant on May 26, 2004. Subsequently, defendant has filed a motion to vacate the conviction under 28 U.S.C. § 2255 (Dkt. No. 31), a motion to proceed in forma pauperis (Dkt. No. 32), and a motion to dismiss (Dkt. No. 34). The government has moved to dismiss the defendant's § 2255 petition, noting ¶ 7 of the plea agreement, under which defendant agreed to waive any collateral attack on his conviction.

Defendant's motion to proceed in forma pauperis is granted. The remaining motions of the defendant are denied; the motion of the government is granted. Defendant expressly waived his right

to collaterally attack his conviction in his plea agreement, and there has been no showing that defendant's counsel was constitutionally defective by the mere fact of recommending that defendant accept the proposed plea agreement. Defendant's argument stressing "the really really crucial need of him to be with his kids, and take them back with him to Mexico," (Dkt. No. 34, at 2), however commendable and natural as a parent, is not any grounds upon which the court may grant the relief sought.

IT IS ACCORDINGLY ORDERED this 2d day of February, 2005, that the defendant's motion to proceed in forma pauperis (Dkt. No. 32) is granted; his motions to vacate and to dismiss (Dkt. Nos. 31, 34) are denied; the motion of the United States to dismiss (Dkt. No. 33) is granted.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE